

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re CHRISTOPHER P. et al., Persons
Coming Under the Juvenile Court Law.

B240216
(Los Angeles County
Super. Ct. No. CK90219)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

GUADALUPE G.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Marguerite D. Downing, Judge. Affirmed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jessica S. Mitchell, Associate County Counsel, for Plaintiff and Respondent.

Guadalupe G. (Mother) appeals from the December 28, 2011 and January 27, 2012 jurisdictional and dispositional orders of the juvenile court adjudging minors Christopher P. and Richard P. dependents of the court pursuant to Welfare and Institutions Code sections 300, subdivisions (a) (serious bodily injury), (b) (failure to protect), and (j) (abuse of sibling).¹ Mother challenges the sufficiency of the evidence to support the court's jurisdictional findings and argues that the dispositional orders should be reversed or modified. We conclude the jurisdictional findings were supported by the evidence and the court did not abuse its discretion in making the dispositional orders. We affirm the orders of the court.

BACKGROUND

On October 6, 2011, the Department of Children and Family Services (DCFS) filed a petition on behalf of Christina J., born in 1995, Christopher, born in 2005, and Richard, born in 2007. On November 9, 2011, that petition was dismissed and DCFS filed a first amended petition pursuant to section 300, subdivisions (a) and (b), on behalf of Christina and pursuant to section 300, subdivisions (a), (b), and (j) on behalf of Christopher and Richard (the petition). As of January 27, 2012, Christina's whereabouts were unknown. Her dispositional hearing was continued and is not the subject of this appeal.

As sustained with respect to Christopher and Richard, the petition alleged under section 300, subdivision (a) that on September 30, 2011, Mother physically abused Christina by striking her face and throwing a cup at her and that such physical abuse was excessive and caused Christina unreasonable pain and suffering. Such physical abuse by Mother endangers Christina and creates a detrimental home environment, placing her and Christopher and Richard at risk of harm. As sustained with respect to Christopher and Richard, paragraph b-2 of the petition alleged under section 300, subdivision (b) that Mother is unable to provide appropriate parental care and supervision of Christina due to Christina's chronic runaway behavior. As sustained with respect to Christopher and

¹ Statutory references are to the Welfare and Institutions Code.

Richard, the petition alleged under section 300, subdivision (j) that on September 30, 2011, Mother physically abused Christina by striking her face and throwing a cup at her and that such physical abuse was excessive and caused Christina unreasonable pain and suffering. As dismissed with respect to Christopher and Richard, paragraph b-1 alleged under section 300, subdivision (b) that on September 30, 2011, Mother physically abused Christina by striking her face and throwing a cup at her. As dismissed with respect to Christopher and Richard, paragraph b-3 alleged under section 300, subdivision (b) that Mother has a history of mental and emotional problems, including a diagnosis of anxiety; and that Mother failed to take her prescribed medication and is extremely hyper-vigilant and anxious, which impairs her ability to care for Christopher and Richard.

With respect to Christina, section 300, subdivision (a) of the petition alleged that on September 30, 2011, Mother physically abused Christina by striking her face and throwing a cup at her and that such physical abuse was excessive and caused Christina unreasonable pain and suffering. Such physical abuse by Mother endangers Christina and creates a detrimental home environment, placing her and Christopher and Richard at risk of harm. With respect to Christina, paragraph b-2 of the petition alleged under section 300, subdivision (b) that Mother is unable to provide appropriate parental care and supervision of Christina due to Christina's chronic runaway behavior. As stated, Christina's adjudication hearing was continued.

The events leading up to the filing of the petition are as follows. On August 16, 2011, DCFS received a referral that Mother sold methamphetamine out of the home and used drugs with Christina; Mother left drug paraphernalia on the floor where Christopher and Richard play; and Mother and Christopher and Richard live in a one-room garage with no running water. Mother told DCFS she had used cocaine only once, two to three months previously, and denied selling drugs or smoking marijuana or methamphetamine. Mother lived with Christina, Christopher, Richard, and Mother's boyfriend, Carlos R.

Father expressed concern to DCFS about Mother's and the children's living conditions, Christopher's and Richard's lack of clean clothing, and Mother's lack of supervision of Christopher and Richard. Sometimes when Father picked up Christopher

and Richard they were playing unsupervised in the backyard which was covered with “junk.” When Father bought Christopher and Richard new clothes, they would return to his house wearing dirty, old clothes, so he started having them leave their new clothes at his house. Father said Christopher and Richard visited him on weekends and stayed with him a few days a week during summer and holidays. Father believed Mother’s current boyfriend was in a gang and used drugs. Father did not believe Christopher and Richard were safe with Mother. Father managed a pizza restaurant and was stable. He wanted Christopher and Richard to live with him. Father told DCSF that he did not give Christopher and Richard money because he was afraid Christina would take it from Christopher and Richard and use it for drugs. He wanted DCFS to supervise Christopher and Richard to ensure their safety. Christina’s father, E.J., lived in Mexico and was interviewed over the telephone. He reported concerns about Mother’s parenting of Christina because Christina’s behavior has been “escalating” and Mother told him Christina was using drugs. On August 25, 2011, DCFS spoke to Christina, who reported she had dropped out of school. At some point, Christina was put on house arrest.

On September 28, 2011, DCFS received a referral that Mother had hit Richard with an extension cord; she was allowing Christina to have a sexual relationship with a 35-year-old male who was sleeping with her in the living room; and she allowed Christina to smoke marijuana in front of Christopher and Richard. DCFS stated Mother had reported escalating behaviors on the part of the Christina and “[M]other did physically discipline [Christina], she has never used any physical discipline toward [Christopher and Richard].” DCFS stated Christopher and Richard did not disclose physical abuse; there was no indication of any abuse toward Christopher and Richard; and DCFS would consult with a medical team to determine if a forensic physical abuse examination for Christopher and Richard were warranted.

On October 3, 2011, Mother called DCFS to report she had slapped Christina in the face two or three times when Christina had cursed and yelled at her after Mother tried to make her stop smoking a cigarette. Christina then “jumped on” Mother, pushed her, and continued to yell at her. Mother threw a plastic cup at Christina. Mother reported

Christina refused to attend the California Youth Drug Treatment Program and Christina's behavior had "escalated" after she had been put on house arrest. Mother asked DCFS to take Christina for treatment. She reported she needed help and Christina had been running away and not going to school for the past three years. Mother reported she was pregnant and Christina's behavior was adversely affecting her health. DCFS arrived at Mother's home to take Christina into placement. Christina told DCFS that Mother had slapped her after Christina had cursed at her for taking away her cigarette. Christina was observed to have multiple tattoos on her hands, wrists, ankles, shoulders and face. Christina refused to go with DCFS but instead ran away from home.

On October 12, 2011, Christina was found with David R., who said he was going to take her to Mexico. Christina was placed at a juvenile detention center. On December 17, 2011, Christina ran away with a man, who maternal aunt believed was Christina's 40-year-old gang-affiliated boyfriend.

On October 26, 2011, Mother appeared "hyper-vigilant, anxious and nervous." Mother seemed on the verge of a nervous breakdown. She said she had trouble sleeping, was not taking her anxiety medication, and as a result of oversleeping had not taken Christopher to school. During DCFS's visit, first Mother's landlord, and then a woman, came to the house to request documentation regarding a vehicle owned by the landlord. The woman and Mother raised their voices to each other as the woman threatened Mother and told her DCFS would take her children away because there was no running water in the home. Mother said she had stopped paying rent when the landlord disconnected the water to her home, so she had to get water from the next door neighbor's water hose. DCFS asked Mother to stay with a relative because her home was not safe for Christopher and Richard. At a subsequent team decision meeting, Mother reported the police had found a bag of marijuana in her car that she believed belonged to Christina. Subsequently, Mother reported that her boyfriend had been deported, she was being harassed by her landlord, and she had had a miscarriage.

Commencing on October 27, 2011, Christopher and Richard stayed with Father. DCFS reported on December 5, 2011, that Father and his wife were meeting

Christopher's and Richard's needs. Christopher was enrolled in school and Richard was on the waiting list for a head start program. A last minute information filed on November 9, 2011, indicated Mother was arrested on November 11, 2011, and was being charged with a felony.

On December 28, 2011, the juvenile court issued a protective custody warrant for Christina. The court continued the adjudication with respect to Christina and excused her counsel, who left the hearing. The court then proceeded with respect to Christopher and Richard. After hearing argument from DCFS, Mother's, and Christopher's and Richard's counsel, the court stated its tentative "was to dismiss all of the counts but the b-2, but since we're not proceeding necessarily, I would just find the j-1 as well." It then stated, "Well, the b-2 is only as to Christina, so that's going to be in abeyance. So it would be sustained j-1." The court dismissed the allegations of paragraphs "b-1" and "b-3," alleged under section 300, subdivision (b), and held "in abeyance b-2." The court concluded, "The court is going to sustain j-1, based upon that, the court finds that Christopher and Richard are persons described by Welfare and Institutions Code 300."

On January 27, 2012, because Christina was still missing, the juvenile court continued Christina's adjudication and disposition hearing to March 1, 2012. Mother was in INS custody. After hearing argument as to the disposition of Christopher and Richard, the court stated, "Richard and Christopher are hereby declared dependents of the court under Welfare and Institutions Code 300 (b). [¶] The court finds by clear and convincing evidence pursuant to [section] 361 that there is a substantial danger if the children were to return home to their physical health, safety, protection, physical and emotional well being, and that . . . there is no reasonable means by which they may be protected without removing them from . . . their mother's physical custody." The court ordered Christopher and Richard placed with Father, sole legal and physical custody to Father, and ordered monitored visitation for Mother on the last Saturday of each month.

The order entered into the minutes reflects that the juvenile court ordered monitored visitation for Mother on the last Saturday of each month. The visitation order ordered Mother "to have monitored visits at least one time per month." The January 27,

2012 order entered into the minutes indicates Christopher and Richard were declared dependents of the juvenile court under section 300, subdivisions (a), (b), and (j). The petition contained in the record shows that paragraphs b-1 and b-3 as alleged with respect to Christopher and Richard under section 300, subdivision (b) were crossed out. The petition contained in the record shows that allegations with respect to Christopher and Richard under section 300, subdivisions (a) and (j), and paragraph b-2, as alleged under section 300, subdivision (b) were not crossed out.

Mother appealed.

DISCUSSION

A. Substantial evidence supported the finding of jurisdiction under section 300, subdivision (j)

1. The record shows with respect to Christopher and Richard the juvenile court sustained the section 300, subdivision (a) allegation

Mother contends that the juvenile court's order sustaining the section 300, subdivision (j) allegation was erroneous because none of the allegations pertaining to Christina had been sustained, other than paragraph b-2, which concerned Christina being a runaway and did not provide the necessary predicate support for the section 300, subdivision (j) finding. We disagree and conclude that the juvenile court sustained the allegations of section 300, subdivision (a).

Section 300, subdivision (j) provides a basis for juvenile court jurisdiction if “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.”

Mother argues that to sustain the section 300, subdivision (j) allegation the juvenile court had to sustain the section 300, subdivision (a) or (b) allegation with respect to Christina. But, she argues, the juvenile court dismissed those allegations and sustained

the allegation of paragraph b-2 alleged under section 300, subdivision (b) (Christina being a runaway), which cannot support a finding of jurisdiction under section 300, subdivision (j). We conclude the record does not bear out Mother's contentions. The transcript shows that the court continued the adjudication of the allegations of section 300, subdivisions (a) and (b) with respect to Christina, and excused her attorney, who left. After hearing argument from DCFS, Mother's counsel, and Christopher's and Richard's counsel, the court stated its tentative "was to dismiss all of the counts but the b-2, but since we're not proceeding necessarily, I would just find the j-1 as well." It then stated, "Well, the b-2 is only as to Christina, so that's going to be in abeyance. So it would be sustained j-1." The court dismissed the allegations of paragraph "b-1" and "b-3," alleged under section 300, subdivision (b), and held "in abeyance b-2." The court concluded, "The court is going to sustain j-1, based upon that, the court finds that Christopher and Richard are persons described by Welfare and Institutions Code 300."

According to the reporter's transcript, the juvenile court did not dismiss the section 300, subdivision (a) allegation at the December 28, 2011 hearing. Rather, the minute order contained in the record indicates that Christopher and Richard were declared dependents of the court under section 300, subdivisions (a), (b), and (j). Additionally, the petition contained in the record shows that on the one hand, the allegations with respect to Christopher and Richard under section 300, subdivisions (a) and (j), and paragraph b-2, as alleged under section 300, subdivision (b) were sustained and on the other hand, the allegations under paragraphs b-1 and b-3 as alleged under section 300, subdivision (b) were dismissed because the latter were crossed out and the former were not. (*People v. Smith* (1983) 33 Cal.3d 596, 599 [conflict in reporter's transcript and clerk's transcript not irreconcilable where objective reading of record supported defendant's claim ruling intended to dispose of both murder and manslaughter offenses]; *Roraback v. Roraback* (1940) 38 Cal.App.2d 592, 596 ["if the language of the order be in any degree uncertain, then reference may be had to the circumstances surrounding, and the court's intention in the making of the same"]; *In re Merrick V.* (2004) 122 Cal.App.4th 235, 249 [while conflicts between reporter's and clerk's

transcripts are generally presumed to be clerical in nature and are resolved in favor of reporter's transcript, particular circumstances may dictate otherwise].)

We conclude that as to Christopher and Richard, the juvenile court sustained the section 300, subdivision (a) allegation, which provided the predicate support for the section 300, subdivision (j) finding.

2. There was substantial evidence to support the section 300, subdivision (j) allegation

Mother argues that even if a separate predicate was not required or the necessary predicate had been established, there was no substantial evidence that there was a substantial risk that Christopher and Richard would be abused or neglected as alleged in section 300, subdivision (j) because DCFS reported that Mother had never used physical discipline toward Christopher and Richard. We disagree.

As stated, the juvenile court can adjudge a minor a dependent of the court under section 300, subdivision (j) if the sibling has been abused as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. Section 300, subdivision (j) does not require that there be a substantial risk that the child be abused in the same way as the sibling, but just that there is "a substantial risk that the child will be abused or neglected, as defined in those subdivisions." (§ 300, subd. (j); see *In re Maria R.* (2010) 185 Cal.App.4th 48, 62 [section 300, subdivision (j) adjudication permissible of child under section 300, subdivisions (a), (b), (d), (e), or (i) whose sibling has been sexually abused under subdivision (d)].)

Further, section 300, subdivision (j) provides, "The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child."

The juvenile court's jurisdictional finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355; Cal. Rules of

Court, rule 5.684(f).) “““When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]” [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258–1259.)

The juvenile court sustained section 300, subdivision (j) with respect to Christopher and Richard and declared them dependents under section 300, subdivision(b). Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left”

“A jurisdictional finding under section 300, subdivision (b) requires: ““(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” [Citation.]’ [Citations.] The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.)

It is not disputed that Mother slapped Christina in the face and threw a cup at her. Thus, while there is no evidence that Mother physically abused Christopher and Richard, there was evidence that, by physically abusing Christina, Mother created a detrimental home environment that placed Christopher and Richard at risk of harm. At the time of

the incidents, Christopher and Richard were of tender years, six and four, respectively. The escalating incidents between Mother and Christina, the physical violence visited on Christina by Mother, the drug use by Christina, Christopher's and Richard's lack of clean clothing, and Mother's lack of supervision provide sufficient support for the juvenile court's determination to adjudge Christopher and Richard dependents under section 300, subdivision (j).

Accordingly, we conclude that there was substantial evidence to support the section 300, subdivision (j) allegation.

B. The juvenile court did not abuse its discretion in ordering monitored visitation for Mother

Mother contends that the juvenile court's oral pronouncement, the order entered into the minutes, and the written visitation order regarding visitation cannot be reconciled and should be deemed void; and the order of one visit per month is an abuse of discretion because it is vague and impermissibly delegates non-ministerial visitation details to Father. We disagree.

Both the juvenile court's oral pronouncement and the order entered into the minutes regarding visitation ordered monitored visits for Mother on the last Saturday of each month. The visitation order attached to the final judgment filed on January 27, 2012, states that "Mother is to have monitored visits at least one time per month." Because the visitation order is more favorable to Mother than the juvenile court's oral pronouncement and the order entered into the minutes, Mother cannot show how she has been harmed, and we decline to void the order.

We also disagree with Mother that the order of at least one visit per month is an abuse of discretion because it is vague and impermissibly delegates non-ministerial visitation details to Father. The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion. (*In re Neil D.* (2007) 155 Cal.App.4th 219, 225.) When a minor is adjudged a dependent child of the court under section 300, section 362, subdivision (a) gives the juvenile court authority to "make any and all reasonable orders

for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court.”

The court is not limited to the content of the sustained petition when it considers what disposition would be best for the child, but may rely on family history and behavior. (*In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1183.) Section 358, subdivision (b) provides that: “Before determining the appropriate disposition, the court shall receive in evidence the social study of the child made by the social worker, any study or evaluation made by a child advocate appointed by the court, and other relevant and material evidence as may be offered”

“The juvenile court has broad discretion to decide what means will best serve the child’s interest and to fashion a dispositional order accordingly. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103–1104.) Its determination will not be reversed absent a clear abuse of that discretion. (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1005.)” (*In re Corey A.* (1991) 227 Cal.App.3d 339, 346.) ““The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.)

The order requiring Mother to have monitored visits on “at least one time per month” was not an abuse of discretion. Christopher and Richard had been visiting Father every weekend and a few days a week during holidays and the summer. Christopher and Richard were described as lacking clean clothing and being unsupervised while they played in the backyard, which was covered with ““junk.”” Father believed Mother’s current boyfriend was in a gang and used drugs, and Father did not believe Christopher and Richard were safe with Mother. Mother had admitted slapping Christina and throwing a cup at her. Christina ran away from home and placement and was reported to have escalated her behavior toward Mother. At the time of disposition, Mother was charged with a felony and was in the custody of the INS. Meanwhile, Father and Father’s

wife were meeting Christopher's and Richard's needs. Nor does the order give Father unfettered discretion to determine time, place, and length of the visit.

We conclude the juvenile court did not abuse its discretion in fashioning the disposition orders.

DISPOSITION

The juvenile court's jurisdiction and disposition orders are affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.